

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW J. HULAK

Appeal No. 97-3196
Application No. 08/569,275¹

ON BRIEF

Before CALVERT, ABRAMS and FRANKFORT, *Administrative Patent Judges*.

ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 21-32. Claims 1-20 have been

¹ Application for patent filed December 8, 1995. According to appellant, this application is a continuation-in-part of Application 08/225,576, filed April 11, 1994, now abandoned.

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canceled and claims 33-40 have been withdrawn from consideration as being directed to a non-elected invention. No claims have been allowed.

The appellant's invention is directed to a locking device for a tractor trailer air hose coupling. The subject matter before us on appeal is illustrated by reference to claims 21 and 27, which read as follows:

21. A two piece locking device for a trailer or container carrier air hose coupling secured with a padlock through matching hasp holes comprising:

(1) a hasp holed flange and an insert hole on a face of a rectangular cage, and

(2) a hasp holed flange with a tongue or pin insert which fits through the insert hole and into an air hole in the coupling.

27. A two piece gladhand locking device fabricated from sheet steel comprising:

(1) a rectangular holed cage with an adjacent perpendicular semicircular flange with hasp hole; and

(2) a hasp holed semicircular flange with a tongue insert.

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THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

Bratzler 1986	4,571,964	Feb. 25,
Renne 1991	5,076,077	Dec. 31,
Adams, Jr. (Adams) 1993	5,246,345	Sep. 21,

THE REJECTIONS²

Claim 32 stands rejected under 35 U.S.C. § 112, first paragraph, as being based upon a specification which fails to provide support for the invention as now claimed.

Claims 21-32 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

² A rejection on the basis of the judicially created doctrine of obviousness-type double patenting was withdrawn by the examiner upon the filing of a terminal disclaimer.

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Claims 27-30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Renne.

Claims 31 and 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Renne.

Claims 21-24 and 26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bratzler in view of Renne.

Claim 25 stands rejected under 35 U.S.C. § 103 as being unpatentable over Bratzler in view of Renne and Adams.

The rejections are explained in Paper No. 6 (the final rejection).

The opposing viewpoints of the appellant are set forth in Paper No. 13 (the supplemental Appeal Brief).

OPINION

The Rejection Under Section 112, First Paragraph

The examiner has objected to the specification as originally filed because it does not provide support for the limitation in claim 32 that the rough edges of the locking device are removed by "burnishing." We agree with the examiner that this term is not explicitly recited in the specification, and are not persuaded by the appellant's

arguments that it should not be considered to be new matter.
This rejection is sustained.

The Rejection Under 35 U.S.C. § 112, Second Paragraph

There are four parts to this rejection. The first is that the term "rectangular," as used in claims 21, 27 and 31, is indefinite, in that it is not clear whether the appellant is applying it to the shape of the cage or the shape of the channel that extends through the cage. We do not agree. The explicit language used in the claim is that the "cage" is rectangular. There is no mention of a channel extending through the cage. The common definition of "cage" is a box or enclosure having some openwork.³ To state that this cage is "rectangular" in our view indicates to one of ordinary skill in the art that the walls of the cage are of rectangular shape and meet at right angles. This clearly is supported by the disclosure of the invention. The fact that the claim language is broad does not cause it to be indefinite.

The second item of alleged indefiniteness concerns what is "fabricated" in claims 22, 24, 25 and 30. In our opinion

³ See, for example, *Merriam Webster's Collegiate Dictionary, Tenth Edition*, 1996, page 160.

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the artisan would understand this to mean that it is the "locking device" which is "fabricated," for that is the item to which each of these claims is directed, and the language of the claims does not contain further restrictions. Thus, we also do not agree with the examiner here.

Nor do we agree that the term "adjacent" in claim 27 is indefinite. To state that there is a flange "adjacent" to a cage is not an inaccurate statement, in view of the disclosure, although it is a broad manner in which to set forth the relationship between these two components. However, as we stated above, a claim is not indefinite simply because its language is broad.

With regard to claim 28, the examiner's point is well taken, for the dependent claim sets forth the hasp holes for the second time.

In summary, it is our opinion that indefinite language appears only in claim 28, and therefore the rejection will be sustained with regard to that claim only.

The Rejection Under Section 102

Claims 27-30 stand rejected on the basis that the subject matter recited therein is anticipated by Renne. Anticipation

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is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. See *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), *cert. dismissed sub nom.*, *Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984). The law of anticipation does not require that the reference teach what the applicant is claiming, but only that the claim on appeal "read on" something disclosed in the reference, *i.e.*, all limitations of the claim are found in the reference. See *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984).

Independent claim 27 requires that there be a "rectangular holed cage." As we pointed out above, a cage is an enclosure. Renne discloses an "enclosing unit 12" comprising a stationary member 31 and a pivoted member 32. The term "cage" in the appellant's claims therefore must be read on both members of Renne's enclosing unit 12. The "adjacent perpendicular semicircular flange with hasp hole"

required by the claim reads on hasp 45 of Renne. What remains of the claim language is "a hasp holed semicircular flange with a tongue insert." While Renne discloses a hasp holed semicircular flange 35, this element does not have a tongue insert. The only tongue present in the Renne device is mounted on the cage, that is, on stationary member 31, which is a part of the cage and not the semicircular flange.

It therefore is our opinion that the subject matter of claim 27 does not read on the Renne device, and thus is not anticipated by this reference. The rejection of independent claim 27 and, it follows, of dependent claims 28-30, therefore is not sustained.

The Rejections Under Section 103

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness (*In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993)), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill

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in the art (*In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993)).

Claims 31 and 32 stand rejected as being unpatentable over Renne. As we pointed out above in our discussion of the Section 102 rejection based upon Renne, the reference fails to disclose the subject matter required by independent claim 27, from which claims 31 and 32 ultimately depend. Considering this reference in the context of Section 103 does not alleviate that deficiency, since we fail to perceive any teaching, suggestion or incentive which would have led one of ordinary skill in the art to modify the Renne structure in such a fashion as to conform to the terms of claim 27. This being the case, we will not sustain the rejection of dependent claims 31 and 32.

Claims 21-24 and 26 stand rejected as being obvious in view of the teachings of Bratzler in view of those of Renne. Bratzler is directed to a lock for a trailer hitch. While the Bratzler device has some features in common with that which is recited in claim 21, there are some key differences. First of all, the Bratzler "cage" is cylindrical rather than rectangular, as required by the claim. And this is for good

reason, for the trailer hitch structure which it is to receive is of essentially circular cross-section, and fits closely therein. Thus, it is our view that one of ordinary skill in the art would not have been motivated to substitute a rectangular cage for the cylindrical structure disclosed by Bratzler. Second, whereas the claim specifies that there be a hasp holed flange "and" an insert hole on "a" face of the rectangular cage, in the Bratzler arrangement the corresponding hasp holed flange 25 is located on the opposite side of the "cage" from the insert hole 24 that receives the tongue. Thus, even if it were considered, *arguendo*, to have been obvious to substitute a rectangular cage for the cylindrical one disclosed by Bratzler, the reference teaches locating the two components named above on opposite faces. Finally, the examiner has presented no evidence that would support a conclusion that one of ordinary skill in the art of securing air hose couplings would have been motivated to utilize a trailer hitch lock for that purpose.

For the foregoing reasons, it is our view that the teachings of Bratzler and Renne fail to establish a *prima*

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facie case of obviousness with regard to the subject matter of independent claim 21. This being the case, we will not sustain the rejection of claim 21 or of claims 22-24 and 26, which depend therefrom.

Adding Adams to the other two references in the rejection of claim 25 fails to cure the problems present in the basic rejection. The rejection of claim 25 also is not sustained.

SUMMARY

The rejection of claim 32 under 35 U.S.C. § 112, first paragraph, is sustained.

The rejection of claim 28 under 35 U.S.C. § 112, second paragraph, is sustained.

None of the other rejections are sustained.

The decision of the examiner is affirmed-in-part.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED-IN-PART

	IAN A. CALVERT)	
	Administrative Patent Judge))	
)	
)	
	NEAL E. ABRAMS)	BOARD OF
PATENT	Administrative Patent Judge))	APPEALS AND
)	INTERFERENCES
)	
	CHARLES E. FRANKFORT)	
	Administrative Patent Judge))	

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James K. Luchs
32 Hayloft Circle
Wilmington, DE 19808